

REMARKS

The present response amends claims 16 and 20. In addition, claims 21-22 are withdrawn. Claims 15-22 remain pending in the captioned case. Claims 17-19, 21, and 22 are withdrawn. Further examination and reconsideration of the presently claimed application are respectfully requested.

Claim Objections

Objections were lodged against claims 16 and 20 for informalities. Specifically, the language “has been” and “have been” in claims 16 and 20, respectively, was objected to as being unclear. In response thereto, claims 16 and 20 have been amended in accordance with the Examiner’s suggestions. Therefore, Applicants respectfully request removal of this objection.

Section 102 Rejection

Claims 15, 16, and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,409,489 to Sioufi (hereinafter “Sioufi”). The standard for “anticipation” is one of fairly strict identity. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art of reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP 2131. Furthermore, anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, as arranged in the claim. *W.L. Gore & Assocs. V. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). Using these standards, Applicants submit the cited art fails to disclose each and every element of the currently pending claims, some distinctive features of which are set forth in more detail below.

Sioufi does not teach an implant plate for stabilizing a fracture of an upper arm head or a proximal upper arm. Present claim 15 makes clear that the claimed implant plate is for a specific portion of the body, that portion being an implant plate for stabilizing an upper arm or

proximal upper arm. Thus, claim 15 (from which all remaining claims depend) is to an implant plate for stabilizing the upper arm region.

Contrary to present claim 15, Sioufi describes a surgical instrument and kit for reorientation of the femur or hip region of a human body (Sioufi -- col. 1, lines 11-18). Throughout Sioufi, reference is made only to correcting problems of the human hip. The surgical instrument and kit of Sioufi is specifically designed to form a cone cut along the femoral neck region G so as to allow a cervical screw 7 to be inserted into femur M as a guide for compression plate 73 (Sioufi -- col. 4, lines 59-68; col. 5, lines 6-26). Cervical screw 7 is sized and placed at a particular angle along axis 11 of the femur so that compression plate 73 can be rotated at various degrees to move the ill zone K of the femoral head 1 from the weight bearing zone toward a non-weight bearing zone (Sioufi -- col. 5, lines 1-33). Nowhere in Sioufi is there any mention that its surgical instrument and kit can be used for any region other than the hip or femoral head and, in fact, the design and angle at which the kit is applied must be specific to the angle of the femoral head so that penetration occurs to the ill zone K of the femoral head from the angular side surface of that femur. Nowhere else can the instrument of Sioufi be used.

Sioufi does not teach a raised receiving member disposed at an outer edge of a side of the implant plate facing away from the bone. Present claim 15 specifies a raised receiving member placed at a particular region of the implant plate. In particular, claim 15 recites the raised receiving member being disposed at an outer edge of a side of the implant plate facing away from the bone. As clearly shown in Figs. 1A and 1B of the present specification, receiving members 6 are placed along the side, yet are placed along the outer edge of head-end portion 2, yet extend on the side of the implant plate facing away from bone 4 (Specification -- Figs. 1A and 1B).

Contrary to present claim 15, eyelets 88 in Sioufi extend from an outer edge of the side of compression plate 73 facing toward femur M (Sioufi -- Figs. 8A, 8B, 10A, and 10B). Clearly, as shown in Fig. 8B of Sioufi, eyelets 88 are situated on the side of the implant plate facing toward the bone when compression plate 73 is mounted into the conical cavity previously formed in the femoral head I (Sioufi -- Figs. 8B, 10A, and 10B). In order for Sioufi to meet the limitations of present claim

15, eyelets 88 must be disposed on the side of compression plate 73 opposite the side in which they are shown in Fig. 8B.

Sioufi does not teach a receiving member having a circular enclosed inner diameter that surrounds a central axis extending parallel to the outer edge or contour of a side of a head-end portion of an implant plate. Present claim 15 not only describes a receiving member, but also a receiving member having a circular enclosed inner diameter. That inner diameter forms or surrounds a central axis that extends parallel to the outer edge or contour of a side of the head-end portion 2, shown in Figs. 1A and 1B of the present specification. For example, when reviewing present Fig. 1A, receiving members 6 form an aperture 7 having a central axis (shown by a shortened line through aperture 7) (Specification -- Fig. 1A). The shortened line is shown to be parallel to the outer edge or contour of a side of the head-end portion 2.

Contrary to present claim 15, instead of the apertures of eyelets 88 forming a central axis parallel to the outer edge or contour of compression plate 73, the central axis of eyelets 88 extend perpendicular to the outer edge or contour of a side of compression plate 73 (Sioufi -- Fig. 8A). In order for Sioufi to meet the requirements of claim 15, eyelets 88 must be rotated 90° -- however, nowhere is there any suggestion that eyelets 88 can be rotated.

Sioufi does not teach a raised receiving member for receiving a flexible fastening member. Present claim 15 recites a raised receiving member and, specifically, such member for receiving a flexible fastening member. Examples of such flexible fastening members include a suture material, etc.

Contrary to present claim 15, received within eyelets 88 of Sioufi are threaded screws 99 of stabilizing hook member 93 (Sioufi -- col. 9, lines 21-25; Fig. 9). Sioufi specifically states that member 99 is a threaded screw and, more importantly, requires that “stabilizing hook member 93 is of course made of a solid and resistant substance” (Sioufi -- col. 9, lines 33-35, emphasis added). Hook member 93 must be solid in order for there to be a “solid fastening of the stabilizing hook member 93 to eyelets 88” (Sioufi -- col. 9, lines 24-26). Contrary to the claimed flexible fastening

member, stabilizing hook member 92 of Sioufi is "made of a solid and resistant substance" (Sioufi -- col. 9, lines 33-35.

For at least the foregoing reasons, Applicants assert that claim 15 and claims dependent therefrom are not anticipated by the cited art. Accordingly, Applicants respectfully request removal of this rejection.

CONCLUSION

The present amendment and response is believed to be a complete response to the issues raised in the Office Action mailed February 23, 2006. In view of the remarks herein, Applicants believe pending claims 15-22 are in condition for allowance. If the Examiner has any questions, comments or suggestions, the undersigned attorney earnestly requests a telephone conference.

No fees are required for filing this amendment; however, the Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment, to Daffer McDaniel, LLP Deposit Account No. 50-3268.

Respectfully submitted,
/Kevin L. Daffer/
Kevin L. Daffer
Reg. No. 34,146
Attorney for Applicant(s)

Daffer McDaniel, LLP
P.O. Box 684908
Austin, TX 78768-4908
(512) 476-1400
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